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Congress of the United States
House of Representatives
Washington, DC 20515-0530

HENRY A. WAXMAN
30TH DISTRICT, CALIFORNIA

April 18, 2006

SENIOR DEMOCRATIC MEMBER
COMMITTEE ON
GOVERNMENT REFORM

MEMBER
COMMITTEE ON
ENERGY AND COMMERCE

C. Manly Molpus
President and Chief Executive Officer
Grocery Manufacturers Association
2401 Pennsylvania Ave, NW, 2nd Floor
Washington, DC 20037

Dear Mr. Molpus:

I am deeply concerned about the significant misunderstandings related to state regulation of food safety that occurred during the consideration of H.R. 4167 in the House of Representatives.

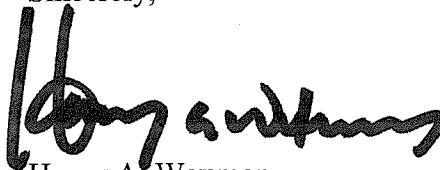
As you know, H.R. 4167, the "National Uniformity for Food Act," has been introduced in each of the last five Congresses—yet there has never been any hearing in either the House or the Senate to understand the impacts of, or factual basis for, the legislation.

I wrote to the Food Products Association (FPA) on March 15, 2006, to clear up some of the common misunderstandings about state food regulation. For instance, I noted that some Members of Congress were under the impression that food companies had to print a different product label for each of the 50 states due to conflicting state laws. I asked the FPA to specify these conflicting laws. The FPA has still not responded to my questions, although I note that the FPA was unable to provide even one example of conflicting state laws to *USA Today*.¹

Therefore, I would appreciate your assistance to help clarify the record on this important issue. I would appreciate answers to the attached questions no later than April 28, 2006.

Thank you for your immediate attention to this request.

Sincerely,



Henry A. Waxman
Member of Congress

¹ Congress moves to bar states from making food safer, *USA Today* (March 26, 2006).

Questions for the Grocery Manufacturers Association

The Congressional Budget Office found that, if H.R. 4167 were enacted, states would likely file 200 petitions to retain state safety standards and notification requirements. Similarly, the consumer protection group Center for Science in the Public Interest (CSPI) and the environmental group Natural Resources Defense Council (NRDC) recently released a report that identifies 196 state laws that could be preempted by H.R. 4167.² The state agricultural commissioners have also repeatedly explained their concerns that many laws, such as those that govern milk and shellfish safety, may be preempted.³ However, the proponents of the legislation have never provided a list of the state laws that they believe would be preempted if a state did not receive permission from the Food and Drug Administration (FDA) to keep them in place. In fact, the GMA has stated that “Statements that H.R. 4167 will preempt roughly 200 state food safety and warning standards are gross overestimates.”⁴

- a. The vast majority of state laws identified by CSPI and NRDC – approximately 160 of the 196 laws identified – have to do with safety standards, not labeling requirements. Please provide a list of state safety standards that you believe will be preempted by this legislation if FDA does not permit a state to maintain such laws.
- b. A leading proponent of H.R. 4167 has stated, “Making consumers deal with 50 different labeling requirements is not without cost. In effect, it divides America into 50 different markets where each of the products cost the consumer just a little more to buy.”⁵ However, fewer than 40 of the 196 laws identified by CSPI and NRDC establish notification requirements. Please provide a list of state notification requirements that you believe will be preempted by this legislation if FDA does not permit states to maintain such laws.
- c. GMA has stated that “allegations that the dairy safety laws of the states would be affected by H.R. 4167 are wrong.”⁶ However, the Secretaries of Agriculture for numerous states, including the States of Wisconsin and New York have reached the opposite conclusion. Please provide a legal memorandum explaining why state dairy laws are unaffected by H.R. 4167.

² Center for Science in the Public Interest & Natural Resources Defense Council, *Shredding the Food Safety Net: a Partial Review of 200 State Food Safety and Labeling Laws Congress is Poised to Effectively Kill with H.R. 4167* (Mar. 2006) (online at <http://www.cspinet.org/new/pdf/shredding.pdf>).

³ See, Website of Rep. Henry A. Waxman, H.R. 4167: Statements of Opposition from the States and Other Groups (March 2006) (online at http://www.house.gov/waxman/issues/health/food_safety_hr_4167_letters_opposition.htm).

⁴ Grocery Manufacturers Association, *GMA Corrects the Record on the National Uniformity for Food Act* (online at <http://www.gmabrands.com/news/docs/NewsRelease.cfm?DocID=1630>).

⁵ Statement of Rep. Nathan Deal, Congressional Record, H530 (Mar. 2, 2006).

⁶ Grocery Manufacturers Association, *GMA Corrects the Record on the National Uniformity for Food Act* (online at <http://www.gmabrands.com/news/docs/NewsRelease.cfm?DocID=1630>).

2. Proponents of the legislation have repeatedly implied that there are conflicting state requirements that unnecessarily complicate the ability of the food industry to bring products to market. For instance, the Food Products Association has cited “inconsistent state requirements” as a key reason for congressional action.⁷ Additionally, one proponent of the legislation has stated

If enacted, this important legislation would set much-needed national standards for food safety and put an end to the confusing and often contradictory standards that exist across many States.⁸

However, none of the fewer than 40 state laws identified by CSPI and NRDC which establish notification requirements appear to actually conflict.

- a. In order to help Congress better understand where conflicts between state laws exist, please provide a list of any laws of which you are aware that conflict between the states.
 - b. In order to understand the basis for claims that state laws confuse consumers and lead them to make unsound decisions,⁹ please provide any factual basis for these claims, such as market research or scientific studies.
3. Proponents of this legislation seem to imply that state laws regarding food safety and labeling may not be based upon sound science. For example, the legislation’s leading proponent stated:

if [the states] have a standard based on good science that says, hey, we think that this food ought to have this warning label, then come to the FDA, show us the science, so we can share it with the rest of the country.¹⁰

Another proponent stated:

If a warning about food is supported by science, then consumers in all 50 States should have the benefit of this warning.¹¹

- a. In order to help Congress better understand where the industry believes that states have relied upon faulty science, please provide a list of any state laws of which you are aware that are based on faulty science.
 - b. In praise of H.R. 4167, you have stated that “by providing consistent, science-based food safety standards and warning requirements, all consumers will be able to have confidence in the safety of the food supply and the information

⁷ *Food Industry Advances In Labeling Fight: Bill in Congress Would Ban Many State, Local Rules And Set National Regulations*, Wall Street Journal (Jan. 9, 2006).

⁸ Statement of Rep. Sanford Bishop, Congressional Record, H536 (Mar. 2, 2006).

⁹ *See, e.g.*, statement of Rep. Steve King, Congressional Record, H731 (Mar. 8, 2006).

¹⁰ Statement of Rep. Mike Rogers, Congressional Record, H532 (Mar. 2, 2006).

¹¹ Statement of Rep. Steve King, Congressional Record, H731 (Mar. 8, 2006).

on food labels – regardless of where they live.”¹² However, the H.R. 4167 contains no requirements for new safety standards or warning requirements. Additionally, FDA can reject any state standard or labeling requirement – no matter how well-justified by science – if it determines that the state requirement would “unduly burden interstate commerce, balancing the importance of the public interest of the State or political subdivision against the impact on interstate commerce.”¹³ This standard is so subjective as to leave the future of any applicable state requirement in doubt. In order to better understand the GMA’s interpretation of science-based food safety standards and warning requirements, please provide answers to the following questions.

- i. Mercury is a known reproductive and developmental toxin which can lead to birth defects when consumed by women who become pregnant. Does GMA believe that women should be informed of these risks at the point of sale and on product labels for food containing mercury? There is currently no federal requirements for consumer notification. Should state requirements on this issue be nationalized?
- ii. Lead is a known reproductive and developmental toxin which can lead to developmental problems when consumed by infants and children. The State of California and the City of New York are two governmental bodies that have established mandatory limits on the amount of lead that can be present in candy. FDA prefers a hortatory approach to this issue. Does GMA believe that state and local prohibitions on lead in candy are science-based and should be nationalized?
- iii. Please provide other examples of state and local requirements that GMA believes should be nationalized to ensure that consumers will have confidence in the food supply and in product labels.

¹² Grocery Manufacturers Association, *GMA Corrects the Record on the National Uniformity for Food Act* (online at <http://www.gmabrands.com/news/docs/NewsRelease.cfm?DocID=1630>).

¹³ H.R. 4167, “National Uniformity for Food Act of 2005” (passed by the House of Representatives on March 8, 2006 by recorded vote: 283 - 139) (establishing new section 403B(c) of the Federal Food Drug and Cosmetic Act).